

Law of Armed Conflict

Introduction

War has been a predominant feature throughout our history. While the methods of fighting these wars have changed dramatically throughout history, certain elements have remained constant. One of the most obvious characteristics is the incredibly violent nature of war. In an attempt to prevent unnecessary harm to civilians and societies at large, nations have adopted a series of treaties and laws that are known as the Law of Armed Conflict.

Study Assignment

Read the information section of this lesson.

Lesson Objective: Know how the law of armed conflict affects the parties in war.

Samples of Behavior:

1. State your responsibilities for reporting a violation of the Law of Armed Conflict.
2. List the people who are entitled to Prisoner of War status under the Law of Armed Conflict.
3. State when medical personnel may carry firearms.
4. Identify how occupying forces must treat civilians.
5. State when aircraft can attack targets located in an area densely populated with civilians.

Information

History

Throughout the history of war, belligerents have recognized that it was best to treat certain people, property, and places as exempt from armed conflict. While there is evidence of international law dating back thousands of years, the law of war is a fairly recent development. Francis Lieber prepared the first code on the proper conduct of war in 1863. Lieber developed the *Instructions for the Government of Armies of the United States in the Field*, which covered areas such as protection of private property, noncombatants, prisoners of war, and punishment for war crimes.¹ While these laws were enforceable only on US forces, the principles were acknowledged by many countries, and the rules were instrumental in developing the Hague Conventions on land warfare in 1899 and 1907.

Another critical development in the Law of Armed Conflict occurred at a similar time in Europe. In 1859, Henry Dunant witnessed the battle of Solferino, in Northern Italy. His experience treating the wounded after the battle led to the eventual creation

¹ Schindler, Dietrich. *The Laws of Armed Conflicts: A Collection of Conventions Resolutions and Other Documents*. 2d ed. Henry Dunant Institute, Geneva, 1981. p. 1.

of the International Committee of the Red Cross.² He was also instrumental in drafting the first series of Geneva Conventions in 1864.³ These conventions, over the period of several decades, have focused on the treatment of the sick and wounded, prisoners of war, and civilian personnel in times of war.

Terminology

The law of armed conflict is that part of international law that regulates the conduct of armed hostilities; it is often termed the “law of war.” The United States and several other countries have stated the law of armed conflict is the preferred term, as we have not officially declared war since World War II.

Your Professional Responsibility

As a professional military officer, these laws bind you. The Constitution of the United States, in Article VI, Clause 2, states:

The Constitution...all treaties made, or which shall be made under the authority of the United States, shall be the supreme Law of the Land.

You are responsible for your compliance and your subordinates. If at any time, you become aware of a violation of the law of armed conflict; you are to report the violation to your immediate commander.⁴ The immediate commander is the lowest ranking individual with command responsibilities. This person may be different from your supervisor who may or may not have command responsibility. If the commander is apparently involved in the incident, then the report should be made to the next higher person with command authority. The commander will then consult the Staff Judge Advocate and the proper investigative agency to deal with the violation.

The Law of Armed Conflict

International law governs the conduct of nations and serves to protect their interests, to ensure citizens are treated equally, and to predict, with some degree of assurance, what other nations will do in a given situation.⁵ The Law of Armed Conflict is a subset of international law.

It's interesting that we use the term “Law of Armed Conflict” as though there were a single set of laws that apply to all countries. In reality, the Law of Armed Conflict is a series of conventions, treaties, and customs that have been established by “civilized” nations throughout history.

² W. Michael Reisman and Chris T. Antoniou. *The Laws of War*. Vintage Books, New York, 1994.

³ The Geneva Convention for the Amelioration of the Wounded in Armies in the Field, Aug. 22, 1864, 22 Stat. 940., T.S. No. 377; The Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick of Armies in the Field, July 27, 1929, 47 Stat. 2074, T.S. No. 847, 118 L.N.T.S. 303; The Geneva Convention Relative to the Treatment of Prisoners of War, July 27, 1929, 47 Stat. 2021, T.S. No. 846, 118 L.N.T.S. 343.

⁴ Air Force Regulation 110-32, Training and Reporting to Ensure Compliance with the Law of Armed Conflict, 2 Aug. 1976.

⁵ Darrell Phillips. “The Law of Armed Conflict” lecture, September 1995.

Customary international law arises out of the conduct of nations during hostilities and is binding on all nations. Customs are often difficult to define in concrete terms because they are constantly changing and adapting to new situations. Thus, customary law is constantly evolving and adapting itself to new situations. For example, today, the law is evolving rapidly in the areas of computer networks, space law, and intellectual property. Despite a lack of concrete code, elements of customary law may be found in international conventions, declarations, judicial decisions, international and national tribunals, and other documentary materials.⁶

It's important to note treaties and conventions are binding only on those nations, which have ratified the treaty or convention. While the United States has entered numerous treaties, there are only two treaties that have the greatest influence on the Law of Armed Conflict: The Hague Conventions and the Geneva Conventions.

The Hague Conventions

At the end of the nineteenth century, Czar Nicholas II of Russia called together the principle nations of the world to discuss and resolve the problems of maintaining universal peace, reducing armaments, and improving the conditions of warfare. Twenty-six countries attended the conference in 1899, and the delegates from the conference signed three formal conventions, or treaties. The first convention setup permanent procedures for the optional arbitration of controversial issues between nations. This treaty created the Permanent Court of Arbitration, popularly known as The Hague Court or Hague Tribunal. The second and third conventions revised some of the customs, whether individuals qualified as combatants, noncombatants, or neutrals. These two conventions were supplemented by three declarations: to stay in force five years, forbidding the use of poison gas, expanding (or dumdum) bullets, and bombardment from the air by balloons or by other means. The great nations of this time refused to adopt compulsory arbitration because it infringed on their national sovereignty.

The second Hague Conference took place between June and October 1907, and was attended by representatives from 44 countries. The second conference created 13 conventions, which were concerned principally with clarifying and amplifying the understandings arrived at in the first conference.

This conference was complicated by the introduction of new technologies, most notably the zeppelin and the airplane. While different states had different perspectives on the legitimate use of aerial attack, it was decided that the restrictions on attacking cities through the air could no longer be enforced. There was no concise decision made, but Article 25 of the 1899 Land Warfare Convention was amended to read:

"The attack or bombardment, by whatever means, of towns, villages, dwellings or buildings which are undefended is prohibited."

Several problems emerged from this amendment. First, the Land Warfare Convention conflicted on certain occasions with the Conferences Ninth Convention,

⁶ AFP 110-31, International Law--The Conduct of Armed Conflict and Air Operations, p. 1-7.

“Concerning Bombardment by Naval Forces in Time of War.” Article 2 of the Naval Convention identified particular military objects that were to be considered lawful targets for bombardment to include the following:

“Military works, military or naval establishments, depots of arms or war materiel, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbor.”

The conflicting information between the two conventions left much of the information subject to interpretation. It was further compounded by the ambiguous term “undefended” city. For example, at the outset of World War I, the British debated whether placing anti-aircraft guns in London would make it a “defended city.” If the Germans perceived it to be defended, then they could openly attack any military target in the city, but if no guns were emplaced then it would be undefended. In the end, the guns were emplaced.⁷ Ironically, the Germans placed little consideration whether there were guns in place or not. They viewed London as a legitimate military target because it contained the administrative offices concerned with the direction of the war.⁸

The attending delegates arranged a third Hague conference, but it was canceled because of the outbreak of World War I. Following World War I, a number of treaties and agreements were signed, but few had the strength of the Hague Conventions.

The Geneva Conventions

World War II demonstrated the inadequacies of the previous conventions and the abuses that some countries were willing to commit in attempting to achieve their objectives. Following the war, the world powers agreed that stronger conventions needed to be made. The Geneva Conventions signed in 1949 are the laws currently recognized and are actually four separate agreements: Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Force in the Field; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea; Geneva Convention Relative to the Treatment of Prisoners of War; and Geneva Convention Relative to the Protection of Civilian Persons in Time of War. It’s important to note that although these are official conventions (i.e. they should be enforced only against countries signing the convention); they are considered in large part to be customary international law to be enforced on all countries.

Prisoners of War Convention (POW)

The fate and treatment of captured enemy combatants owes much to the principle of humanity. In the past, victorious armies have frequently slaughtered the defeated enemy, enslaved them, and held valuable prisoners for ransom. These practices officially ceased with the Treaty of Westphalia in 1648, which called for the release of prisoners without ransom.⁹ The general principle is that a combatant

⁷ Air Campaign Course, 1994. “Air Power and the Law of War” Tami Davis Biddle, p. 42.

⁸ Ibid., p. 43.

⁹ W. Flory, Prisoner of War, A Study in the Development of International Law, 1942. p. 15.

without arms is defenseless and therefore entitled to protections granted other noncombatants. However, captors are justified in taking precautions to prevent prisoners from taking up arms against them again.

International law also states combatants must distinguish themselves from the civilian population in order for the civilian population to be protected. A lawful combatant is authorized to engage in acts of war on behalf of his state, and he is also a legal target of an act of war.

The Third Geneva Convention specifies the categories of personnel who qualify to be treated as POWs if captured by the enemy. Members of a nation's military force are entitled to POW status. The member of the military force is uniformed, armed, and subject to an internal disciplinary system which includes a chain of command. Militia and volunteer units would also constitute part of the armed force.¹⁰ Mercenaries fighting along side of a nation's armed force are not given POW status as they are motivated by a desire for private gain.¹¹

Members of an armed force of a government not recognized by the detaining power are entitled to POW status. This provision was implemented because the Germans did not recognize the Free French during World War II and refused to grant POW status to its captured members.¹² It's also important to note states do not have to officially declare war to be entitled POW status. The North Vietnamese, therefore, violated the Geneva Convention when they failed to recognize American airmen as POWs because the United States did not declare war against Vietnam.

General Population

When their homeland is being invaded, the population has the right to rise up and take arms to resist the invasion. They do not have the obligation to be organized or bear a fixed distinctive symbol. They are entitled to POW status as long as they carry their arms openly and generally adhere to the law of armed conflict. They are lawful combatants only during the invasion. Once the area becomes occupied, a civilian has no legal right to engage in warfare; if he does, he can be tried and punished for his actions.

Many times, a conquering nation will face one or more resistance groups. Resistance movements in France constantly harassed the Nazis, during World War II. These resistance members are given combatant status if they meet the following four criteria:

- (1) The force has a responsible command structure.
- (2) The members wear a fixed distinctive insignia recognizable at a distance and they are distinguishable from the civilian population.
- (3) The members carry their arms openly.
- (4) The resistance must conduct its operations in accordance with the laws of armed conflict.

¹⁰ Ibid., p. 16,

¹¹ Ibid., p. 281.

¹² P. Rowe, *Defence: The Legal Implications*, 1987. p. 159.

Certain individuals who do not engage in acts of war may be entitled to POW status. Civilians who accompany the armed forces, news correspondents, technical representatives, and supply contractors are granted POW status.

Spies are not protected under the law of armed conflict. A spy is defined as an individual “acting clandestinely, or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party. Thus soldiers not wearing a disguise, who have penetrated into the zone of operations of a hostile army for the purpose of obtaining information, are not considered spies.”¹³ Spies, once they rejoin their army, are entitled to protected status and are not responsible for their previous acts of espionage.¹⁴

POWs “must at all times be humanely treated.”¹⁵ The Geneva Convention specifically requires a detaining power to protect the individual and his dignity. It prohibits killing or torturing prisoners. Prisoners may not be used for scientific or medical experimentation. Although a captured prisoner may slow a troops' movement, expose the capturing troops to greater danger or consume the troops' provisions, a member of the detaining power is not justified in executing the prisoner.

Wounded and Sick

International law grants special protection to those who are wounded, sick, or shipwrecked, as well as those who care for them. The wounded, sick, or shipwrecked are no longer in a defensible position, and they are no longer engaged in hostilities.¹⁶

After an engagement, parties must search for and collect the wounded, sick, or shipwrecked. The military may appeal to the local civilian population to assist in the search for, or care of, the wounded and sick.¹⁷ The civilian population may not expose these protected persons to violence. For the purposes of treatment, all persons collected must be treated as if they were the party's nationals. There can be no distinction between friend and foe. Distinctions for treatment will be based only on grounds of medical priority only.¹⁸

The Geneva Convention also requires parties to search for the dead that after an engagement. The search should be made immediately.¹⁹ Records must be maintained of the dead, and this information along with articles of sentimental value must be passed to the descendant's nation. The descendant's remains must be

¹³ Hague Convention No. IV of 1907, Article 29.

¹⁴ Regulation Annexed to Hague Convention No. IV Respecting the Laws and Customs of War on Land, 18 October 1907, Article 29. p. 36. Stat 2277, T.S. No. 539.

¹⁵ Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

¹⁶ J. Pictet, *Humanitarian Law*, 1975. p. 77.

¹⁷ Geneva Convention for the Amelioration of the conditions of the Wounded and Sick in Armed Forces in the Field, 12 August 1949. U.S.T. 3114, T.I.A.S. No. 846, 118 L.N.T.S., Article 15.

¹⁸ Pictet, p. 76.

¹⁹ Geneva Convention for the Amelioration of the Wounded and Sick, Article 15.

honorably interned, preferably in individual graves for later identification if necessary. Cremation is only authorized on hygienic or religious grounds.²⁰

Medical and Religious Personnel

Medical and religious personnel are considered “protected persons” because of their humanitarian missions. As protected persons, they may not be subjected to attack and must be allowed to carry out their mission. In return for this protection, medical and religious personnel may not engage in hostile operations.²¹ Medical personnel are those who are exclusively assigned to treat, search for, and transport the wounded and sick. Religious personnel include those personnel who are attached to the military’s chaplaincy. Officer medical personnel may carry a shortarm (e.g. handgun) for self-defense without running the risk of losing protected status. Enlisted personnel are authorized to carry a long arm (e.g. rifle or M-16).

If medical or religious personnel fall into the hands of the enemy, they do not become prisoners of war; instead they should be retained only as long as the medical or spiritual needs of the prisoners of war require.²²

Medical facilities and equipment are also safeguarded from attack. The Geneva Convention requires that medical facilities and transports be marked in order to maintain protected status. They must display a clearly visible symbol, the Red Cross, red crescent, or a red lion and sun on a white background.²³ Even though the marking should protect the medical facilities from attack, the United States reserves the option of not marking its facilities. The line commander, not the medical commander, is responsible for determining if a facility should be marked. For example, a commander may choose not to mark a facility if the enemy does not recognize the facility’s protected status even if the facility is marked.

A medical facility may be subject to capture. The captors must allow medical personnel to carry on their care for the wounded and sick. A medical facility may lose its special protection if it is being used for military and not humanitarian purposes. In such a case, the facility would become a lawful object of attack. However, the belligerent must warn the facility of the violation and of its intention to attack it.²⁴ A warning is not required if it would be impractical.

Properly marked medical transports being used for humanitarian purposes may not be the subject of attack. Medical transports may include aircraft, hospital ships, and ambulances. The enemy may not see the Red Cross if an airplane is flying at thirty thousand feet. Therefore, the commander should tell the enemy the nature of the mission, the route, time, and altitude. This helps ensure the enemy will not accidentally shoot down the aircraft thinking it was a legitimate military target.

Civilians

²⁰ M. Greenspan, *The Modern Law of Land Warfare*, 1979. p. 77.

²¹ Pictet, p. 79.

²² Geneva Convention for the Amelioration of the Wounded and Sick, Article 28.

²³ *Ibid.*, Article 38.

²⁴ *Ibid.*, Article 36.

During the twentieth century, the civilian population has experienced great suffering due to the affects of war. Civilians are not permitted to take up arms or to participate in the conflict, and are granted certain protections under the Geneva Convention.

While a territory is engaged in battle, special zones protect civilians. A “safety zone” may be created to protect the especially vulnerable portion of the population, such as the elderly and sick.²⁵ Temporary shelter may be provided in a combat area in a “neutralized zone” for all civilians who are endangered.²⁶

If a belligerent is employing an economic blockade or siege against an enemy, the belligerent must allow medical supplies to pass through for the benefit of civilians.²⁷ Additionally, food and clothing for the benefit of children under the age of fifteen and for expectant mothers are also allowed to pass through the blockade. The belligerent is entitled to search the contents of the shipment and assurances of the destination of the consignment.

Once a belligerent occupies enemy territory, the civilian population comes under its control. The occupation begins once the occupier has replaced the territory’s government. The primary focus of the Civilian Convention is to restrict the occupier’s power over the civilian population. The occupier is the administrator for the territory.²⁸ It is responsible for the well being of the population. The occupier is responsible for order. The occupier may punish those civilians resisting its occupation.²⁹ It may not engage in collective punishment.³⁰ Members of the population may not be tried for acts committed before the occupation. The Civilian Convention limits the power of the occupier by allowing the death penalty to be imposed only when the offense would have been punishable by death in the territory before occupation.³¹ Less serious offenses are to be dealt with by internment or imprisonment.

Aerial Bombardment

Airpower in times of war can be a decisive factor in the conflict. It can strike at the enemy’s core facilities without having to first defeat massed armies in the field. Today’s high-powered aircraft can attack virtually any legitimate military target. One of the primary concerns in developing an air campaign is what constitutes a legitimate military target. The Law of Armed Conflict relating to aerial bombardment traces its origin to the Hague Conference of 1899. The countries party to the conference adopted a declaration forbidding bombs to be dropped from balloons for five years.³²

²⁵ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287, Article 14.

²⁶ *Ibid.*, Article 15.

²⁷ G. von Glahn, *Law Among Nations*, 6th ed., 1992. p. 797.

²⁸ von Glahn, p. 774.

²⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Article 64.

³⁰ *Ibid.*, Article 33.

³¹ *Ibid.*, Article 68.

³² AFP 110-31, p. 5-1.

Since then airpower has changed dramatically and the law governing aerial bombardment has been refined as well. One of the most critical periods in the development of aerial bombardment law regarding was during World War II. Both Allied and Axis powers conducted strategic bombing campaigns against enemy facilities. Many times, these raids resulted in devastating casualties to the enemy's civilian population. When we look back at this period, there are three critical forces responsible for the casualties. First, the bombing itself was inaccurate. In order to destroy a target the size of a house took approximately 4500 B-17s carrying a total of nine thousand tons of bombs.³³ A second factor was the escalating nature of reprisals and counter reprisals by all sides in the conflict. A third factor was the failure to effectively separate war industry and other vital targets from the population centers, thereby necessitating target area bombing.³⁴

Today, the laws governing aerial bombardment consist of guidance in part found in the original Hague Conferences, experiences in World War II, and the Geneva Conventions. One of the most important of these rules is the general protection granted to individual civilians and civilian objects. Places such as schools and houses are protected from military operations, to include aerial bombardment.³⁵ This does not mean that military operations cannot inflict civilian casualties. Rather, the population itself cannot be viewed as a military target. Therefore, air forces can attack key military targets in heavily populated areas so long as the overall military gains from the attack outweigh the risks posed to the civilian population.³⁶ It's important to note that the defending country is responsible for ensuring that its populace is removed from key military targets. That is, the enemy should not use its people as shields.

The United States, and its coalition partners, confronted Iraq's use of human shields on numerous occasions throughout the Gulf War. The most publicized incident during the war was the bombing of the Al Firdos bunker in Baghdad. Many people have questioned the attack, which resulted in the death of scores of Iraqi civilians, but according to the law, coalition forces conducted a legitimate attack. Evidence was presented stating that the facility was converted to a military command and control center. Intelligence collected indicated a ten-foot-thick concrete ceiling, camouflaged exterior to make it look as though it were already struck, a military presence detected through satellite imagery, and intercepted military command signals.³⁷ Iraqi civilians sought refuge in the bunker on a floor above the command post during the nighttime coalition air raids. Coalition planners were unaware of the civilian presence in the bunker, and authorized the attack.³⁸

The responsibility for the unfortunate civilian deaths lies ultimately with the Iraqi government. The government ignored their legal obligations on two counts. First, they failed to prevent noncombatants from entering a military facility. Second,

³³Meilinger, Phillip, Colonel. Ten Propositions Regarding Air Power. Air Force History and Museums Program, 1995. p. 43.

³⁴AFP 110-31, p. 5-4 and 5-5.

³⁵Ibid., p. 5-5.

³⁶Humphries, John G. Lt Col. "Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm" *Airpower Journal*, Fall 1992. p. 38.

³⁷Ibid., p. 35.

³⁸Ibid., p. 36.

they converted an air raid shelter to a Command, Control, and Communications bunker, thereby locating a military objective in an area surrounded by the civilian populace.³⁹

If the coalition planners had been aware of the civilian presence, the target may not have been attacked. Evidence exists indicating that the air campaign, known as Instant Thunder was the most discriminate air campaign in history. The coalition's rules of engagement were much more stringent than the Laws of Armed Conflict in regards to aerial bombardment. If a coalition aircrew could not locate its target or find an alternative one, the rules required the pilots to return, weapons loaded. Consequently, approximately 25 percent of all combat missions culminated in undelivered ordnance.⁴⁰

Enforcing the Law of Armed Conflict

There are a wide variety of sanctions the international community can place against a state in violation of the law of armed conflict. While there are several cases throughout history demonstrating one or two of these principles, the sanctions imposed against Iraq immediately following the Persian Gulf War are a good example of what can be done. During the Gulf War, Iraq committed numerous violations of international law and the law of armed conflict. Due to the wide range of flagrant violations, Iraq received universal criticism.

Instruments of Enforcement

Condemnation is the least threatening method of ensuring compliance.⁴¹ Its purpose is to raise international public opinion against the offending state in order to encourage them to correct their offending behavior. In the case of Iraq, condemnation came on numerous occasions with the strongest measures coming from the U.N. Security Council. Condemnation was evident throughout the conflict starting with Iraq's invasion of Kuwait, spanning through their numerous political, human rights, and law of armed conflict violations.

Since condemnation is the least threatening, it is also seen as the least effective method. When countries seek to send a stronger message they sometimes choose to *rupture diplomatic relations*.⁴² This is done by severing diplomatic relations with a state as a form of protest to the offending state. While this sanction sends a serious message to the offending state, it makes it difficult to rectify the problem because diplomatic communication has stopped.

When several states seek to send a strong message to the offending state, the offending nation may also be expelled from membership in an international

³⁹ Ibid., p. 37.

⁴⁰ Ibid., p. 38.

⁴¹ Laura H. Fuster, Major. "Law of Armed Conflict Part II" The American Legal System: Issues for the Soldier-Scholar. USAFA Department of Law, 1994. p. 134.

⁴² Ibid., p. 135.

organization.⁴³ Similar to rupturing diplomatic relations, this sanction can make it extremely difficult to solve a problem through peaceful means. As a result, the U.N. has expelled states on only two separate occasions. The first state was South Africa due to its continued support of apartheid, and the second was the Serbian-controlled Yugoslav federation in an attempt to pressure the Serbs to abate their human rights violations.⁴⁴

Countries and international organizations may also enforce economic sanctions. Unilateral economic sanctions, during times of peace, must be authorized by the U.N. Security Council. Economic sanctions may come in a variety of forms including embargoes, boycotts, blockades and seizure of property belonging to the offending state. For example, the Security Council approved Resolution 661 (6 August 1990) against Iraq. The sanctions included the following:

1. A boycott on the import of all commodities and products originating in Iraq or Kuwait. The key target was oil, which accounted for 95% of Iraq's export earnings.
2. With the exception of humanitarian assistance, a total embargo was imposed against the sale or supply of all products to anyone in Iraq or Kuwait.
3. All financial transactions and transfers of funds to the Iraqi government or to any other entity in Iraq or Kuwait were forbidden.
4. To protect the assets of Kuwait from Iraqi confiscation, such assets in any member state were to be frozen.
5. All contracts with Iraq or Kuwait, which could impede the sanctions program, were to be suspended.⁴⁵

If these sanctions do not yield the desired end-state, then more serious measures may be taken. *Reprisals* are the commission of acts that, although illegal, may, under the specific circumstances of the given case, become justified. The guilty adversary has himself behaved illegally, and the reprisal is taken as the last resort.⁴⁶ In order for a reprisal to be considered lawful, it must meet certain criteria:

1. It must be in response to a serious violation of international law.
2. It must be for the purpose of compelling the adversary to observe the law of armed conflict.
3. There must be reasonable notice that reprisals will be taken.
4. Other reasonable means to secure compliance must be attempted.
5. A reprisal must be direct against the personnel or property of an adversary.
6. The reprisal must be in proportion to the original violation.
7. It must be publicized.
8. It must be authorized by national authorities at the highest political level, and entails full state responsibility.⁴⁷

⁴³ Ibid., p. 135.

⁴⁴ Ibid., p. 135.

⁴⁵ C.C. Joyner, Sanctions, Compliance and International Law: Reflections on the United Nations' Experience Against Iraq, 32 Virginia Law Review. 1, 8-15 (1991)

⁴⁶ AFP 110-31, p. 10-3.

⁴⁷ Ibid., p. 10-4, 10-5.

It's important to note the Geneva Conventions strictly prohibit reprisals against the sick and wounded, prisoners of war, shipwrecked persons, and buildings or equipment protected by the conventions.

Although reprisals have been effective in stopping violations of international law, they also have a tendency to escalate the conflict, or if used improperly cause counter-reprisals. Reprisals are also controversial from a military operations perspective. Specifically, in diverting scarce military resources to reprisals, a nation weakens its overall fighting effectiveness and may strengthen the enemy's will to fight.

Reciprocity refers to the customary view that one nation's adherence to many of the rules of law is conditional to an opposing forces' adherence to the law. Reciprocity, similar to reprisals, can escalate the conflict. The vital difference between reciprocity and reprisals involves the nature of the act. Reprisals focus on a single violation, whereas reciprocity stems from a permanent disregard for international law.

Compensation or *reparations* are monetary payments incurred by states to make amends to parties for injuries suffered.⁴⁸ In the case of Iraq, the Security Council demanded Iraq accept liability for damages in Kuwait, and set the payment 30% of Iraqi oil revenues.⁴⁹

Finally, violations of the law of armed conflict may be subject to *criminal enforcement*. As stated earlier, the United States recognizes all treaties as being equivalent to U.S. law. In these cases, Americans violating the laws of armed conflict are in effect violating U.S. law and may stand trial for such offenses.

The United States, as well as other nations, may try captured enemy personnel for deliberate, violations of the law of armed conflict. After World War II, the United States conducted or took part in over 800 of these trials, of which the Nuremberg Trials are the most famous. These trials must meet certain minimum standards of fairness and due process, set out in detail in the 1949 Geneva Conventions. Failure to accord captured personnel the right to a fair trial is itself a serious violation of the law of armed conflict.⁵⁰ American pilots experienced this first hand during the Vietnam War. The North Vietnamese refused to grant aircrews prisoner-of-war status, as they were all branded war criminals without receiving due process of the law.

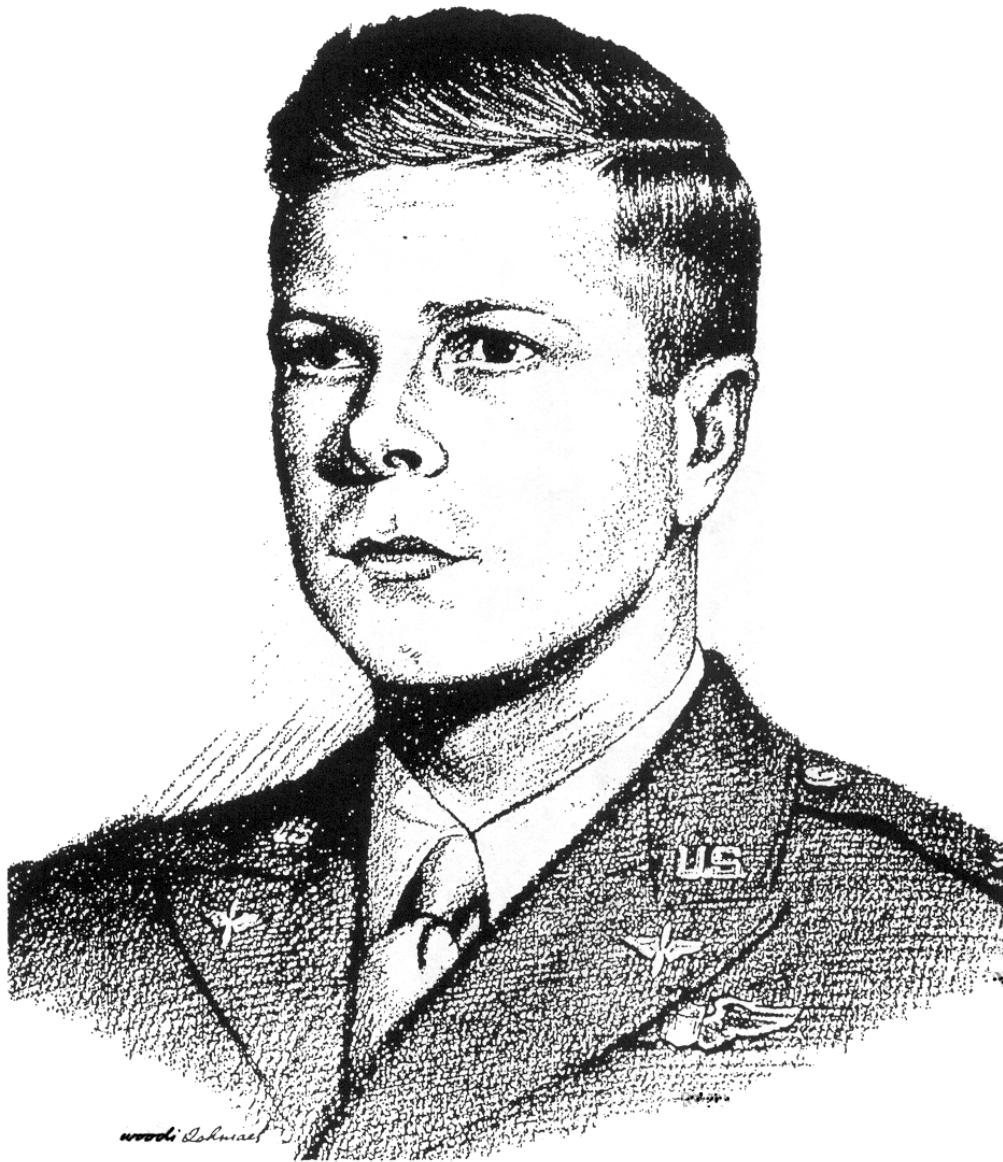
Despite all of its inherent enforcement problems, the Law of Armed Conflict has a central role in modern warfare. The United States respects and upholds the law and expects its officers to follow it under all circumstances. History has demonstrated the positive impact a foundation in the Law of Armed Conflict has upon military members in time of war. The law has a central role in the development of roles of engagement, campaign planning, and execution. Efforts to educate military personnel on the law

⁴⁸ Ibid., p. 10-2.

⁴⁹ C.C. Joyner, 11-12.

⁵⁰ AFP 110-34 Commander's Handbook on the Law of Armed Conflict. 25 July 1980. p. 8-1.

are reflected in our current operations in the Middle East, Bosnia, Kosovo and other hot spots around the world.

**MAJOR RICHARD IRA BONG,**

though assigned to duty as gunnery instructor and neither required nor expected to perform combat duty, Major Bong voluntarily and at his own urgent request engaged in repeated combat mission in a P-38, including unusually hazardous sorties over Balikpapan, Borneo, and in the Leyte area of the Philippines during the period 10 October to 15 November 1944. Major Bong's aggressiveness and daring resulted in his shooting down eight enemy airplanes during this period. Major Bong was killed in a P-80 crash on 6 August 1945, in Burbank, California.